

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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Michele J.,

Plaintiff,

v.

Martin O'Malley, Commissioner of Social  
Security,

Defendant.

Case No. 2:24-cv-00561-BNW

**ORDER**

Presently before the Court is Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) filed on March 21, 2024.

**I. In Forma Pauperis Application**

All parties instituting any civil action, suit, or proceeding in a district court of the United States must pay a filing fee. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. ECF No. 1. Accordingly, Plaintiff's request to proceed *in forma pauperis* will be granted.

The Court will next screen Plaintiff's complaint. ECF No. 1-1.

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## II. Screening the Complaint

### A. Standard of Review

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2).<sup>1</sup> In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a claim, all allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*

If a plaintiff’s complaint challenges a decision by the Social Security Administration, before filing a lawsuit, the plaintiff must exhaust administrative remedies. *See* 42 U.S.C. § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam) (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the claim”). Generally, if the SSA denies a claimant’s application for disability benefits, the claimant may request reconsideration of the decision. If the claim is denied at the reconsideration level, a

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<sup>1</sup> Although § 1915 largely concerns prisoner litigation, § 1915(e) applies to all *in forma pauperis* proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners[.]”).

1 claimant may request a hearing before an administrative law judge. If the ALJ denies the claim, a  
2 claimant may request review of the decision by the Appeals Council. If the Appeals Council  
3 declines to review the ALJ's decision, a claimant may then request judicial review. *See generally*  
4 20 C.F.R. §§ 404, 416.

5 Once a plaintiff has exhausted administrative remedies, she may obtain judicial review of  
6 a SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.*  
7 An action for judicial review of a determination by the SSA must be brought "in the district court  
8 of the United States for the judicial district in which the plaintiff resides." *Id.* The complaint  
9 should state the nature of plaintiff's disability, when plaintiff claims she became disabled, and  
10 when and how she exhausted her administrative remedies. The complaint should also contain a  
11 plain, short, and concise statement identifying the nature of plaintiff's disagreement with the  
12 determination made by the SSA and show that plaintiff is entitled to relief.

13 A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted  
14 her administrative remedies and timely filed a civil action. However, judicial review of the  
15 Commissioner's decision to deny benefits is limited to determining: (a) whether there is  
16 substantial evidence in the record as a whole to support the findings of the Commissioner, and  
17 (b) whether the correct legal standards were applied. *Morgan v. Commissioner of the Social*  
18 *Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

### 19 **B. Analysis**

20 Here, Plaintiff alleges that her applications for disability insurance benefits and  
21 supplemental security income were denied initially, upon reconsideration, and by the  
22 Administrative Law Judge ("ALJ") following a hearing. ECF No. 1-1 at 2. Plaintiff further  
23 alleges that on February 9, 2024, the Appeals Council denied the request for review, and, at that  
24 time, the ALJ's decision became the Commissioner's final decision. *Id.* at 3. Plaintiff filed this  
25 action on March 21, 2024, which is within the allowable period. Thus, it appears that Plaintiff has  
26 exhausted the administrative remedies and timely commenced this action.

27 The complaint also indicates that Plaintiff resides within the District of Nevada and the  
28 nature of her disability. *Id.* at 1-2.

1 Finally, the complaint includes sufficient facts to state a claim for relief, alleging that  
2 (1) “the ALJ did not state clear and convincing reasons for rejecting the symptom and limitation  
3 testimony that [Plaintiff] could not engage in fulltime work on a consistent basis”; (2) “the ALJ  
4 did not properly weigh the medical evidence that [Plaintiff] had more limitations as expressed by  
5 Dr. Sinkov”; and (3) “the ALJ finding of the ability to perform work is not supported by  
6 substantial evidence because the vocational witness’s testimony relied upon was inconsistent with  
7 reliable government data.” *Id.* at 3. Accordingly, Plaintiff alleges a cognizable claim upon which  
8 relief can be granted.

9 **IT IS THEREFORE ORDERED** that

10 1. Plaintiff’s request to proceed *in forma pauperis* (ECF No. 1) is  
11 GRANTED. Plaintiff will not be required to pay the filing fee of \$402.00.


12 2. Plaintiff is permitted to maintain this action to conclusion without the  
13 necessity of prepayment of any additional fees or costs or giving security for them. This Order  
14 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at  
15 government expense.

16 3. The Clerk of Court must file the complaint (ECF No. 1-1).

17 4. The Clerk of Court must serve the Commissioner of the Social Security  
18 Administration pursuant to Rule 3 of the Supplemental Rules for Social Security.

19 5. From this point forward, Plaintiff must serve on Defendant or, if  
20 appearance has been entered by an attorney, on the attorney, a copy of every pleading, motion,  
21 or other document submitted for consideration by the Court. Plaintiff must include with the  
22 original paper submitted for filing a certificate stating the date that a true and correct copy of the  
23 document was personally served or sent by mail to Defendant or counsel for Defendant. The  
24 Court may disregard any paper received by a district judge or magistrate judge that has not been  
25 filed with the Clerk, and any paper received by a district judge, magistrate judge, or the Clerk  
26 that fails to include a certificate of service.

1 DATED: March 28, 2024

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3 BREND A WEKSLER  
4 UNITED STATES MAGISTRATE JUDGE  
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